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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,905	10/10/2003	Kim R. Smith	163.1797US01	3088
43896	7590	06/01/2006	EXAMINER	
ECOLAB INC. MAIL STOP ESC-F7, 655 LONE OAK DRIVE EAGAN, MN 55121			DELCOTTO, GREGORY R	
			ART UNIT	PAPER NUMBER

1751

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/683,905

Applicant(s)

SMITH, KIM R.

Examiner

Gregory R. Del Cotto

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14, 15 and 17-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-15 and 17-25 are pending. Claim 16 has been canceled. Applicant's arguments and amendments filed 3/22/06 have been entered.

The Examiner asserts that the broad terminology "builder" and "alkalinity source" as recited by instant claim 18 overlap in scope and both may represent the same compound such as sodium carbonate, sodium phosphate, etc.

Applicant's election of Group II, claims 14-20, in the reply filed on 3/22/06 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1-13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/22/06.

Objections/Rejections Withdrawn

The following objections/rejections set forth in the Office action mailed 12/22/05 have been withdrawn:

The rejection of claims 14, 15, and 17 under 35 U.S.C. 102(b) as being anticipated by Krezanoski (US 3,852,210) has been withdrawn.

The rejection of claims 14, 15, and 17 under 35 U.S.C. 103(a) as being unpatentable over Erilli et al (US 5,629,279) has been withdrawn.

The rejection of claims 14-17 under 35 U.S.C. 102(b) as being anticipated by Ramirez et al (US 6,096,702) has been withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 14, 15, and 17-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With respect to instant claim 14, the specification, as originally filed, provides no basis for the limitation "wherein the EO/PO copolymer does not include an alkyl or arylalkyl chain" as now recited by instant claim 14. While the specification does recited that EO/PO copolymers are known, it makes no mention of whether these copolymer degreasers are free of alkyl or arylalkyl chains as now recited by instant claim 14. In fact, for example, US 6,440,919 which is referenced by the instant specification as teaching suitable EO/PO copolymers discloses EO/PO copolymers containing alkyl chains which is in contradiction to the limitation as now recited by instant claim 14. Thus, this is deemed new matter.

With respect to instant claim 14, the specification, as originally filed, provides no basis for "wherein the composition is substantially free of enzymes" as recited by instant claim 14. Thus, this is deemed new matter.

With respect to instant claim 21, the specification, as originally filed, provides no basis for simply "alkoxylate" as recited by instant claim 21. While the specification does provide basis for alkyl-, aryl-, and aralkyl alkoxylates, the specification provides no basis for the broad recitation of "alkoxylates". Furthermore, the specification, as originally filed, provides no basis for "derivatives" of alkoxylates as now recited by instant claim 21. Thus, this is deemed new matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14, 15, and 17-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "substantially" in claim 14 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 14, 15, and 17-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Man et al (US 2003/0087787).

Man et al teach liquid enzyme cleaning compositions in which the enzyme is stable at alkaline pH. Water is present in a concentration of at least 60% by weight. See Abstract. In one embodiment, the composition include an amphoteric surfactant, a nonionic surfactant, and/or cationic surfactant, a protease, propylene glycol, a builder such as EDTA, dye, hydrotrope, etc. The composition may be used for cleaning carpets, laundry, textiles, etc. See para. 51.

Generally, the concentration of surfactant mixture useful in stabilizing liquid enzyme compositions fall in the range of from about 0.5 to about 40% by weight of the composition. Suitable surfactants include block polyoxypropylene-polyoxyethylene polymeric compounds based upon propylene glycol, ethylene glycol, etc., known under the tradename Pluronic, condensation products of one mole of a saturated or unsaturated, straight or branched chain alcohol having from about 6 to about 24 carbon atoms with about from 3 to 50 moles of ethylene oxide, etc. See paras. 80-108. Amphoteric or ampholytic surfactants such as cocoamphopropionate, cocamphocarboxy-propionic acid, etc., may also be used in the compositions. See paras. 171-176. The surfactants can be used singly or in combination and the amphoteric surfactants can be used in combination with nonionics or anionics. See para. 190. Builders are also used in the compositions and include alkali metal salts of silicates, carbonates, phosphates, etc. Polycarboxylate builders may also be used

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including citric acid, citrate, etc. See para. 194-196. Hydrotropes may also be used in the compositions including anionic surfactants such as alkyl sulfate, alkyl or alkane sulfonate, etc. See paras. 200-203. Note that, the Examiner asserts that cleaning as taught by Man et al would suggest rubbing the cleaning composition onto a substrate such as carpet as recited by instant claim 15. Note that, the Examiner has interpreted claim 17 which recites removing a portion of the composition from the surface as being the same as rinsing a portion of the composition from the surface which is clearly suggested by Man et al.

Man et al do not teach, with sufficient specificity, a method of cleaning using a cleaning composition containing an EO/PO copolymer, an amphoteric surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to clean a substrate using a cleaning composition containing an EO/PO copolymer, an amphoteric surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Man et al suggest a method of cleaning using a cleaning composition containing an EO/PO copolymer, an amphoteric surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 14, 15, and 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/24854

'854 teaches improved aqueous carpet cleaning compositions which are ideally suited for use in machinery designed or used in the mechanical cleaning of carpets. The compositions are alkaline, and include one or more deterative surfactants, preferably one or more nonionic surfactants and one or more anionic surfactants, at least about 2% by weight of aminopolycarboxylic acid salt, an organic solvent constituent, an anti-resoiling agent, as well as further optional constituents. See Abstract. Suitable surfactants include anionic, cationic, nonionic, amphoteric surfactants, etc. The most preferred anionic surfactants include alkylated naphthalene sulfates, and alkylated naphthalene sulfonates which fall under the category of anionic hydrotropes. See page 4, lines 10-30. Suitable nonionic surfactants include alkoxy block copolymers based on ethoxy/propoxy block copolymers under the tradename Pluronic, amine oxides, etc. See page 4, line 30 to page 6, line 25. Optional components present in the composition include preservatives, pH buffers, etc. Suitable pH buffers include alkali metal silicates, carbonates, etc. See page 10, line 1 to page 11, line 15. The optional components should not exceed about 20% by weight of the composition. See page 18, lines 1-15. Suitable aminopolycarboxylic acid salts include EDTA and salts thereof. See page 21, lines 1-30.

The method of cleaning carpet fibers, carpets, and carpeted surfaces such as on walls, floors and the like which comprises the step of providing to such a machine the compositions and utilizing the machine in the cleaning of said fibers, carpets or carpeted

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floors. See page 2, lines 15-30. The compositions may be conveniently applied to a substrate by spraying, dipping, coating, padding, foam or roller application, etc., which would suggest brushing or rubbing as recited by the instant claims. See page 19, line 20 to page 20, line 15. Note that, the Examiner has interpreted claim 17 which recites removing a portion of the composition from the surface as being the same as rinsing a portion of the composition from the surface which is clearly suggested by '854.

'854 does not teach, with sufficient specificity, a method of cleaning using a cleaning composition containing an EO/PO copolymer, an amphoteric surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to clean a substrate using a cleaning composition containing an EO/PO copolymer, an amphoteric surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '854 suggests a method of cleaning using a cleaning composition containing an EO/PO copolymer, an amphoteric surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO00/24854 as applied to claims 14, 15, and 17-23 above, and further in view of Man et al (US 2003/0087787).

'854 is relied upon as set forth above. However, '854 does not teach the use of a cocamidopropyl betaine in addition to the other requisite components of the composition as recited by the instant claims.

Man et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use cocamidopropylbetaine in the composition taught by '854, with a reasonable expectation of success, because Man et al teach the use of cocamidopropylbetaine in a similar cleaning composition and further, '854 teaches the use of amphoteric surfactants in general.

Response to Arguments

With respect to Man et al, Applicant states that Man et al teach the use of enzymes while the compositions of the present invention do not need an enzyme in order to work effectively. In response, note that, the instant claims recite "substantially free of enzymes" which would not completely exclude enzymes from the compositions. The Examiner asserts that 0.1% by weight of an enzyme (see para. 52) as taught by Man et al would fall within "substantially free of enzymes" as recited by the instant claims.

With respect to WO00/24854, Applicant states that '854 does not teach the use of an EO/PO copolymer and amphoteric surfactant as recited by the instant claims. In response, note that, '854 teaches that suitable surfactants include amphoteric surfactants, etc. See page 2, lines 20-30. Furthermore, '854 teaches that other surfactants include EO/PO block copolymers sold under the tradename PLURONIC

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which are the same as the EO/PO block copolymers as recited by the instant claims. The Examiner asserts that '854 would suggest compositions having the same stain removal properties as the compositions recited by the instant claims because '854 teaches compositions containing the same components in the same proportions as recited by the instant claims.

Conclusion

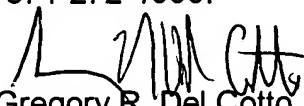
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
May 30, 2006